



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2012

Mr. R. Brooks Moore  
Managing Counsel, Governance  
The Texas A&M University System  
301 Tarrow Street Sixth Floor  
College Station, Texas 77840-7896

OR2012-16133

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 472192 (TAMU 12-450).

Texas A&M University (the "university") received a request for a request for information related to an investigation of a traffic accident. You claim some of the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note the submitted information includes court documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Thus, the court documents we have marked are subject to disclosure under section 552.022(a)(17). Although you seek to withhold the court documents under sections 552.103 and 552.108 of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, sections 552.103 and 552.108 do not make information confidential for purposes of section 552.022(a)(17). Thus, the university may not withhold any of the information in the

marked court documents under sections 552.103 or 552.108. Therefore, as you claim no other exception to disclosure of the information in the court documents, they must be released pursuant to section 552.022(a)(17) of the Government Code.

Next, we address your claim for the remaining information at issue under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information you have marked to be withheld under section 552.108 is related to a pending criminal prosecution. You inform us, and have provided a letter confirming, the Brazos County Attorney’s Office objects to disclosure of the marked information because its release would interfere with the prosecution. Based on your representations and the letter, we conclude section 552.108(a)(1) is applicable to most of the remaining marked information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note the marked information includes a citation, a statutory warning, and a notice of suspension. Because copies of those documents were provided to the person who is the subject of the citation, the warning, and the notice, we find the release of those documents will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). We therefore conclude the citation, the statutory warning, and the notice of suspension may not be withheld under section 552.108.

We also note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes an identification and description of the complainant but does not include a driver’s license number. Thus, the university must release basic offense and arrest information, including the information related to the reporting party you have marked other than her driver’s license number. The university may withhold the remaining information related to the pending prosecution you have marked under section 552.108(a)(1) of the Government Code.

You also seek to withhold the citation, the statutory warning, and the notice of suspension under section 552.103 of the Government Code, which provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or

employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information related to litigation through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). If the opposing party has seen or had access to information related to pending or anticipated litigation, through discovery or otherwise, then there is no interest in withholding that information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In this instance, the citation, the statutory warning, and the notice of suspension are related to a pending prosecution. You indicate the recipient of the citation, the warning, and the notice is the defendant in the prosecution. Thus, as the opposing party in the litigation has already seen those documents, we conclude the university may not withhold the citation, the statutory warning, or the notice of suspension under section 552.103 of the Government Code.

Lastly, section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Except for the information we have marked that is not protected by section 552.130 and must be released, we conclude the university must withhold the motor vehicle information you have marked and the additional driver's license and motor vehicle information we have marked under section 552.130 of the Government Code.<sup>1</sup>

In summary, the university (1) must release the marked court documents pursuant to section 552.022(a)(17) of the Government Code; (2) may withhold the remaining

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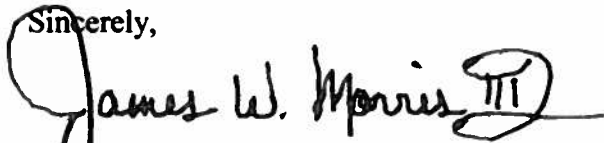
<sup>1</sup>You state the university will redact other driver's license and motor vehicle information pursuant to section 552.130(c) and the previous determination issued under section 552.103(a)(2) in Open Records Decision No. 684 (2009). Section 552.130(c) authorizes a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide notice to requestor). Open Records Decision No. 684 authorizes all governmental bodies to withhold a Texas license plate number under section 552.130 without requesting a decision.

information related to the pending prosecution you have marked under section 552.108(a)(1) of the Government Code, except for the citation, the statutory warning, the notice of suspension, and basic offense and arrest information under section 552.108(c), including the marked information related to the reporting party other than her driver's license number; and (3) must withhold the motor vehicle information you have marked and the driver's license and motor vehicle information we have marked in the citation, the statutory warning, and the notice of suspension under section 552.130 of the Government Code. The university must release the rest of the submitted information, including the remaining information in the citation, the statutory warning, and the notice of suspension and basic information under section 552.108(c).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/bhf

Ref: ID# 472192

Enc: Submitted documents

c: Requestor  
(w/o enclosures)